THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

W.P.No.27816 of 1995

ORDER:

The petitioner approached this Court through this writ petition praying to declare the action of the respondents in seeking to appoint the third respondent as Associate Professor in Entomology Department as illegal and arbitrary.

2. In the year 1994, the petitioner worked as an Associate Professor in Entomology Department of A.P. Agricultural University, Rajendranagar, Hyderabad. The petitioner contended that he possessed all requisite qualifications and also obtained Ph.D in Entomology from Banaras Hindu University in the year 1984. He was appointed as an Associate Professor in 1985 in
the respondent university. The respondent university issued a notification dated 10-10-1994 inviting applications for filling up the posts of 16 Associate Professors, out of which 5 posts were reserved for various categories. In the Entomology Department, there were two vacancies of Associate Professors. Since the petitioner fulfilled all the requisite qualifications, he applied for the post of Associate Professor in Entomology Department.
He was interviewed along with five other candidates. At the time of interview, the candidates were given to understand that 75 marks are earmarked for academic qualifications and experience and 25 marks for interview. He reliably learnt that he was placed at serial No.2 in the list of candidates selected for Entomology Department. The proceedings of the selection committee were approved by the first respondent through a resolution dated
24-07-1995. Therefore, he eagerly waited for issuance of appointment orders as Associate Professor, but it was delayed for the reasons best known to the respondents. The first respondent is proposing to appoint the third respondent who belongs to BC-D category and who is not included in the main list of selected candidates. Respondent is proposing to appoint the third respondent instead of the petitioner with a view to deprive the petitioner of his rightful place. The petitioner further learnt that the respondent is appointing the third respondent in the vacancy reserved for BC-C group by including his name as additional candidate in

Entomology Department. The third respondent cannot be appointed who is not within the 14 roster points commencing from 100 and 1 to 15 in the next cycle.
The procedure adopted by the respondents in clubbing all the departments and making roster point itself is illegal which gives scope for the first respondent to favour the candidates of their choice. Hence, the writ petition for the reliefs as mentioned above.

3. Respondents 1 and 2 resisted the petitioner with the following contentions:

The first respondent university notified 16 posts in the cadre of Associate Professor starting with roster point 100 and
15 points in the next roster. Roster point 14 was earmarked for BC-C group. If a candidate of that particular sub-group is not available, such post can be filled with the available candidate of the next B.C. group. Therefore, the roster point, which was earmarked for BC-C group, was filled up by BC-D group candidate. As there were no applicants from BC-C group in any of the departments advertised, the BC-D candidate happens to belong to Entomology Department. As per the provisions of the statutes governing the procedure for appointment of Teachers, 1966, the candidates will be screened by the selection committee on the basis of qualifications, experience, records and performance in the interview and the committee will recommend a panel of names in order of preference to the Board of Management for consideration. As per Sub-clause (d) of clause (iv) of Statute 4, if the names of the candidates belonging to Scheduled Castes, Scheduled Tribes and Backward Classes do not find place in the panel of selected candidates, as per
sub-clause (d) of clause (ii) of Statute 4, their names shall be added to the panel as extra names at the end to enable the Board of Management for appointment of such candidates as per roster. Accordingly, the candidature of the third respondent was considered by the selection committee in-absentia on the basis of his bio-data and other records and due to his non-availability in the country. Since the third respondent belongs to BC-D category, his name was shown as an additional name in the panel of recommended candidates by the selection committee in the Department of Entomology, since no BC-C group candidate was available for the post reserved for BC-C candidate.

Respondents 1 and 2 in the light of the above submissions, requested to dismiss the writ petition with costs.

4. The petitioner filed a reply affidavit reiterating the contentions raised by him in the writ affidavit. The petitioner further contended that when the notification does not indicate the category for which a post in a particular faculty is reserved, that advertisement and the selection based upon such advertisement will have to be declared as illegal. He further contended that though 16 vacancies were notified, only 14 posts were filled up, therefore, the roster point would stop at 13 and in such an event the vacancies should go to an O.C. candidate, but the respondents have chosen to earmark the vacancy to BC-C candidate and after failing to find a candidate from that category, have allotted the post to BC-D candidate which is not permissible under law. Though the third respondent did not appear for interview, respondents 1 and 2 have proceeded to select him. The offer of the post of Associate Professor to the third respondent was in force for a period of 30 days failing which the appointment will have to be cancelled without any further notice. But, respondents 1 and 2 have granted 4 extensions to the third respondent to join duty without appointing the petitioner in the said vacancy, which is clearly indicating the *mala fide* intention of respondents 1 and 2. As the petitioner was deprived of the appointment, he is entitled for the same.

5. In the light of the contentions, the point for consideration is whether the petitioner is entitled to be appointed in the second vacancy of Entomology Department instead of the third respondent who belongs to BC-D group.

6. It is an undisputed fact that the petitioner belongs to open category. He did not dispute that the notification was issued for filling up of 16 vacancies of Associate Professors in various disciplines of the respondent university. It is also not in dispute that the vacancies commenced from roster point 100 and 15 points in the next roster. Respondents 1 and 2 worked out the roster point with reference to the vacancies as per the said arrangement. The roster point 14 in the second roster was reserved to BC-C group candidate. After receiving the applications, necessary tests were conducted and ultimately the selection board recommended for filling up of 14 vacancies, since there were no applicants for 2 other posts. It is an established principle that when a particular vacancy is reserved for a B.C. candidate of a particular group, it cannot be given to an O.C. candidate. Whenever the selection committee finds that there is no eligible candidate for appointment in BC-C group vacancy, the selection committee have to identify the candidates from B.C. group A, B or D. In the present case, there is no dispute that the first vacancy goes to an O.C.

candidate and as per the roster arranged by the respondents 1 and 2, the second vacancy shall go to BC-C candidate. Since BC-C candidate was not available for appointment in the said vacancy, the name of the third respondent who happens to be a BC-D candidate was included in the panel as an additional name to enable the Board of Management to consider his appointment in the reserved vacancy.

7. During the course of hearing of the writ petition, the first respondent produced the entire file relating to the selection process and explained the manner in which the selection was made. The file relating to the selection of candidates indicates that since there was no BC-C group candidate available for the second post of Entomology Department, they identified the third respondent as a suitable candidate for recommendation. Accordingly, his name was included in the panel as an additional candidate.

8. The petitioner contended that whenever the selection committee finds that there is no BC-C group candidate available for appointment, such post has to be filled by appointing an O.C. candidate and it shall not be given to a candidate of other group in B.C. This argument of the petitioner is not sounding good. The Rules specifically provided that if there is no candidate for appointment for the posts reserved for S.C. and S.T candidates, those posts have to be brought forwarded and in respect of

the vacancies reserved for B.C. candidates, if the candidates belonging to one of the groups is not available, the candidates belonging to any of the other three groups, if available, can be appointed and if there is no B.C. candidate available, then only the management has to consider the appointment of O.C. candidate for such vacancy. The Rules provided for appointment of candidates who are unable to attend interview on account of their assignments abroad and it is the discretion of the management to appoint such candidates by taking into consideration their academic excellence and experience. Therefore, the appointment of the third respondent cannot be said to be illegal. In case of availability of B.C. candidate of any other groups, the question of appointment of O.C. candidate does not arise.

9. The learned counsel for the respondents submitted that subsequent to the filing of the writ petition, the appointment of the third respondent was made as per the recommendation of the selection committee. But during the pendency of the writ petition, the third respondent left the service of the first respondent and the post remained vacant, therefore, the question of holding that the appointment of the third

respondent as illegal at this stage does not arise.

10. The petitioner's name was kept in the panel of three candidates. The first candidate was appointed in the first vacancy meant for O.C., and as the second vacancy was filled by appointing the third respondent as a B.C. candidate, the question of appointment of the petitioner in the second vacancy does not arise.

11. After going through the entire record and in the light of the above circumstances, I do not find any illegality in the procedure adopted by respondents 1 and 2 in the selection process and in appointing the third respondent as a BC-D candidate in the second vacancy.

12. In the result, the writ petition is dismissed as devoid of merits. No costs.

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Dr.G.YETHIRAJULU, J

Date: -12-2005.

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